IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 12TH JANUARY 2007 / 22ND PAUSHA 1928

WP(C).No. 31241 of 2006(T)

OS.304/2002 of MUNSIFF COURT, NORTH PARAVUR
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PETITIONER:

A. RAJAN, S/O.AYYAPPAN,
V.H. COLONY, VELIYATHUNADU KARA,
KARUMALLOOR VILLAGE.

BY ADV. SRI.DINESH R.SHENOY

RESPONDENTS:
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1. BINDU BALAN, D/O.LATE BALAN,
V.H. COLONY, U.C.COLLEGE, ALUVA.

2. BINU BALAN, S/O.LATE BALAN, DO. DO.

3. BABU BALAN, S/O.LATE BALAN,
DO. DO.

4. VILLAGE OFFICER, KARUMALLOOR VILLAGE,
PARAVUR TALUK.

R1 TO R3 BY ADV. SRI.P.L.DEVADAS
SRI.K.M.SREEKANTH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX:

EXT.P1: COPY OF PLAINT FILED IN OS 304/02, MUNSIFF COURT, NORTH PARAVUR

EXT.P2: COPY OF REPORT SUBMITTED BY ADV.COMMISSIONER PRINCE.K.ELIAS DT.23.5.02

EXT.P3: COPY OF OBJECTION TO COMMISSIONER REPORT, SUBMITTED BY PETITIONER

EXT.P4: COPY OF IA 980/02 APPLICATION FOR AMENDMENT IN OS 304/02

EXT.P5: COPY OF WRITTEN STATEMENT FILED BY DEFENDANTS 1 TO 3 IN OS 304/05 OF MUNSIFF COURT, NORTH PARAVUR

EXT.P6: COPY OF REPORT DT.15.7.05 SUBMITTED BY ADV.JYOTHI ANILKUMAR

EXT.P7: COPY OF IA 2310/05 OF MUNSIFF COURT, NORTH PARAVUR

EXT.P8: COPY OF IA 2172/06 OF MUNSIFF COURT, NORTH PARAVUR

EXT.P9: COPY OF IA 2173/06 OF MUNSIFF COURT, NORTH PARAVUR

EXT.P10: COPY OF OBJECTION FILED BY DEFENDANT IN IA 2172/06 IN OS 304/02 OF MUNSIFF COURT, NORTH PARAVUR

EXT.P11: COPY OF ORDER DT.13/11/06 IN IA 2173/06 IN OS 304/02 OF MUNSIFF COURT, NORTH PARAVUR

EXT.P12:COPY OF ORDER DT.13/11/06 IN IA 2172/06 IN OS 304/02 OF MUNSIFF COURT, NORTH PARAVUR

//True copy//

SHW TO JUDGE.

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO.31241 OF 2006

Dated 12th January 2007

J U D G M E N T

Petitioner is plaintiff in O.S.304/2002 on the file of Munsiff court, North Paravur. Respondents are the defendants. This petition is filed under Article 227 of Constitution of India, challenging Exts.P11 and P12 orders passed by learned Munsiff dismissing the applications filed by petitioner. Ext.P11 order was passed in I.A.2173/06. It was an application to call for the report submitted by commissioner who was appointed by vacation court, where suit was originally instituted during vacation. Ext.P12 order was passed in I.A.2172/06, an application to set aside the report submitted by commissioner. Arguments of learned counsel appearing for petitioner and respondents were heard.

2. Argument of learned counsel appearing for petitioner was that commissioner who was appointed by vacation court was directed to file a report before Munsiff court, North Paravur, where the suit should

have been instituted and both the petitioner and respondents proceeded with the suit as if the report is there in the records and petitioner has filed objection to that report also and only when suit was taken up for evidence it was found out that report submitted by commissioner is not available and therefore I.A.2173/06 was filed. It was argued that learned Munsiff should have allowed the application. Learned counsel also argued that suit was originally dismissed for default was restored later on and when the suit was dismissed the application filed by petitioner to set aside the report submitted by commissioner which is available in the records was also dismissed but when suit was restored the application which was dismissed for default was not restored and consequently petitioner filed I.A.2172/06 which was dismissed by learned Munsiff on the ground of delay without considering the question whether there is merit in the application and in such circumstance Ext.P12 order is to be quashed. Learned counsel appearing for respondent submitted that copy of the report submitted by commissioner appointed by vacation court is available with both plaintiff and

defendants and in such circumstances, even if report is not available in the court records, it could be produced and admitted in evidence and therefore for that purpose Ext.P11 order need not be interfered with. Learned counsel appearing for respondent submitted that petitioner filed I.A.2172/06 only after evidence was taken and in such circumstance there is no reason to interfere with Ext.P12 order.

3. On hearing learned counsel appearing for petitioner and respondents, it is clear that a commission was appointed by vacation court where suit was originally instituted. Commissioner has prepared a report. It is not very clear, whether report was filed before the vacation court of before the Munsiff court. Whatever it be, it is admitted that report prepared by the Commissioner is available with both plaintiff and defendants, though it is not seen among records. If it is before the learned Munsiff, report should have been available among the court records. Whatever it be, when a commission was appointed and commissioner has inspected the property and copies of reports were available with the parties, learned Munsiff could have

allowed the application and addressed District Judge to find out whether report was in fact filed before District court, the vacation court and it is available. Ext.P11 order is therefore quashed.

4. Learned Munsiff is directed to address District court and find out whether report submitted by commissioner appointed by vacation court is available there. If it is found that report is not available there, as well as before the Munsiff court, North Paravur learned Munsiff may permit the copy of the report to be marked in evidence.

5. When suit was dismissed for default and consequently pending applications were dismissed for default and later suit was restored, learned Munsiff should have restored the applications which were dismissed along with the suit. Whatever it be, when on failure of the court to restore the application to set aside the report, petitioner filed I.A.2172/06 seeking the same relief, learned Munsiff should not have dismissed the application on the ground of delay. It is seen that under Ext.P12 order, learned Munsiff has not considered the question whether report submitted by

commissioner appointed by learned Munsiff is to be set aside or not on merits. In such circumstance Ext.P12 is quashed. Learned Munsiff is directed to consider I.A.2172/06 on merits and pass appropriate orders. Learned Munsiff may dispose the suit expeditiously.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.